IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1110 of 1982

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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M/S. SIKKA NAVIGATION CO. - Appellant(s)
Versus
DEPUTY DIRECTOR OF ENFORCEMENT & 2 - Defendant(s)

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Appearance :
MR JR NANAVATI for Appellant(s) : 1,
MR JITENDRA MALKAN, MR PURVISH MALKAN for Defendant(s) : 1 – 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 28/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the order of the Foreign Exchange Regulation Appellate Board, New Delhi passed in Appeal No.458 of 1980 dated 3rd June, 1981.

2.0 The brief facts of the case are as that the appellant had preferred an appeal being Appeal No. 458 of 1980 against the order dated 09.09.1980 passed by respondent no. 1 – Deputy

Director of Enforcement. By the said order dated 09.09.1980, the appellant was held guilty of committing contraventions of various Sections of the Foreign Exchange Regulation Act, 1947 (for short, “the Act”). The Appellate Authority, by impugned order dated 03.06.1981, partly allowed the said appeal of the appellant. Hence, the present appeal.

3.0 Heard. The lower Authority has held the appellant guilty of committing contraventions of the provisions of Sections 4(1), 5(1)(a), 5(1)(d) and 9 of the said Act. The said finding has been arrived at mainly on the basis of the letter dated 05.01.1977 written by the appellant in reply to the directives issued by the respondent and the statement of one Abdul Aziz Moosabhai, a partner of the appellant, recorded on 30.11.1978. In the said letter dated 05.01.1977, it was stated by the appellant that the appellant had purchased two Engines and that the prices of the said two Engines were paid by one Fahad Marzook who had advanced a friendly loan to it without

any interest, on the oral promise that the appellant would repay the said amount on receipt of necessary permission from the Government of India. In the statement given by the Partner of the appellant on 30.11.1978, it was stated that in the Books of Accounts of the appellant, the costs of the said two Engines were credited in favour of Fahad Marzook.

3.1 From the said letter dated 05.01.1977 and the statement of the Partner of the appellant recorded on 30.11.1978t, it is established that the appellant had borrowed foreign exchange from Fahad Marzook who was not an authorized dealer in Foreing Exchange and that the said amounts were paid in Foreign Exchange to one M/s. Abdul Mohseen H. Marzook & Company of Kuwait. However, while doing so, no approval of the Reserve Bank of India has been taken, permitting the appellant to effect the aforesaid borrowings or for making the payments of the said two amounts of Foreign Exchange which is mandatory. Since the same was not obtained, the provisions of Sections 4(1) and

5(1)(a) of the said Act had been contravened.

3.2 Further, the Appellate Authority has not believed the case of the appellant that the repayment of the loan to Fahad Marzook was conditional since no evidence has been produced to indicate that the appellant had approached the Reserve Bank of India for taking permission to make remittances towards repayment of the said two loans. So far as the contravention of the provision of Section 9 of the said Act is concerned, the same has not been established. Apart from that, it is also proved that the appellant could not be said to be a “Partnership Firm” since two of its members were minors at the relevant point of time. Thus, the appellant was neither a Company nor a body Corporate nor a Firm at the relevant point of time.

3.3 However, since the Foreign Exchange which was borrowed and paid to Non-resident was utilized in acquiring Engines which were installed in Indian Vessels, the penalty was

reduced. I am in complete agreement with the reasonings given by and the findings arrived at by the Appellate Authority and hence, find no reason to interfere in this appeal.

4.0 In the result, the appeal is dismissed. No order as to costs.

(K. S. Jhaveri, J.)

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